

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 04-0074P**

**Sales Tax**

**For the month of April 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2; 45IAC1-1-54

The taxpayer protests the late penalty.

**STATEMENT OF FACTS**

The late penalty was assessed on the late payment of a monthly sales tax return for the month of April 2003.

The taxpayer is a company residing in Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer requests the penalty be waived as the tax return was missent to the taxpayer's residence instead of the taxpayer's business by the taxpayer's accountant. The taxpayer did not realize the tax form had been sent to his residence as his wife was hospitalized and the taxpayer did not open his mail until June 2003, whereupon the taxpayer realized the April returns were overdue. Furthermore, the taxpayer argues he has a good compliance history.

With regard to the missent mail, the taxpayer is liable for the actions of an agent. In this case, the accountant. As such, the taxpayer is liable for the missent mail and fails to establish reasonable cause on this point. 45 IAC 1-1-54

With regard to the illness, the Department will waive penalty in the event of an incapacitating illness. However, the incapacitating illness must afflict the said taxpayer and prevent the

taxpayer from performing tax duties. The Department does not feel the incapacitating illness on the part of the taxpayer's wife prevents the taxpayer from opening his mail and filing monthly tax returns on time. As such, the taxpayer fails to establish reasonable cause on this point.

With regard to the good compliance history that the taxpayer claims, the Department records show the Department has waived penalty on a previous liability. Due to the existence of a previous error, the Department does not feel the taxpayer has established a good compliance history. As such, the taxpayer fails to establish reasonable cause on this point.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer's penalty protest is denied.